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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,262	04/27/2005	John E. Walls	VMACosUSNP	7343
39208	7590	07/22/2009		
CR MILES, P.C. CRAIG R. MILES 405 MASON COURT, SUITE 119 FORT COLLINS, CO 80524			EXAMINER NGUYEN, TRI V	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			07/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,262	Applicant(s) WALLS ET AL.	
	Examiner TRI V. NGUYEN	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/17/09 has been entered.

Response to Amendment

2. Upon the amendment filed on 04/17/09, Claims 1-27 are cancelled. The currently pending claims are Claims 28-35.

3. Applicants' remarks and amendments have been carefully considered; the rejections based on the MacDonald et al. and Rothan references are withdrawn. However, they are not found persuasive regarding the rejections based on MacDonald et al., Rothan and Rau references and the 103(a) rejections are maintained.

The Walls and Goodin declarations under 37 CFR 1.132 filed 04/17/09 is insufficient to overcome the 103(a) rejection of claims 28-35 based upon MacDonald et al., Rothan and Rau as set forth in the last Office action because the evidence from the Merck Manual is not persuasive and is not commensurate with the instant claims - it seems like the cellulose component is insoluble in hot water only and the declarations expand the evidence to instant claims; there is no mention of solubility as pertaining to the instant claims. It is also noted that the cellulose component is not included in the instant claims. Furthermore, the declarations are not based on quantitative data but merely opinions - no substantive evidence is provided that

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the combination of the MacDonald et al., Rothan and Rau references would not be stable or nor inoperable. It is noted that Rau is relied to teach the concept and feature of water soluble envelopes not the gasified element. It is also noted that the declaration is based on opinion not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972). See also MPEP 716.01(c) III. Also, MPEP 716.01(c)III states " Although an affidavit or declaration which states only conclusions may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the application." *In re Brandstadter*, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 28-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over MacDonald et al. in view of Rothan (FR 2717184) and Rau (US 6310014).

MacDonald et al. disclose a method washing hands with a soap composition that includes polyvinyl alcohol, borax citric acid and a dye (col 1, line 65 to col 2, line 30). MacDonald further teach that the dye is kept separate until the mixing occurs and a change in color is observed - e.g. via microencapsulation (col 3, lines 27-38). However, MacDonald et al. do not explicitly disclose the features of rupture of the envelope containing the dye, the time dependence parameter and a fragrance. In an analogous art, Rothan teaches that is well known to use a liquid soap win which a colorant is encapsulated into microsphere such as cellulose acetylphthalate that ruptured due to an external parameter as time indicia (page 1, lines 12-14 and 49-57) and Rau disclose the features of water soluble envelopes and fragrance as a release agent (col 2, line 54 to col 3, line 4 and col 4, lines 12-14). Because the references

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teach the similar methods and elements, the claims would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Furthermore, the claims would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of a skilled artisan. In particular, it would have been well within the purview of skill artisan to implement the feature of a water soluble envelope with fragrance and dye ingredients to gain the benefits of a time dependence release mechanism that has a pleasant sensorial perception.

Response to Arguments

6. Applicant's arguments filed 04/17/09 have been fully considered but they are not persuasive.

a. Regarding the official notice remarks, there seems to be a miscommunication as there never was an official notice provided. The examiner provided new evidence and clarifications: the dye release agent and microencapsulation features are taught in col 3, lines 29-36 and the table starting on col 6 and "non-aqueous liquid" is taught in col 1, line 65 to col 2, line 30 and col 4, lines 55 - 63. It is noted that the soap is made by mixing the listed components - none of which is aqueous. See for example, the stickiness of the soap due to the fibers and that is further rinsed off with water in col 4, lines 55-63.

b. Regarding applicants' argument that the "Clear Skin Cleanser" has specific gravity close to water, the examiner notes that it is not conclusive evidence but rather an assumption. There is no factual evidence that a product with a specific gravity of 1.017-1.037 has to be aqueous. The non-aqueous feature is taught by MacDonald listing of the elements in the composition on col 1, line 65 to col 2, line 30 and col 4, lines 55 - 63

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and the fact that non-aqueous composition with fiber-like sticky features has to be rinsed off with water. It is noted that the "non-aqueous" feature is met by having a composition that does not include water thus the method by MacDonald et al. that teaches the step of dispensing soap and water and the omission of the water component in the listed element for the soap would meet the instant claims limitation.

c. Regarding the use of the microencapsulation in the MacDonald reference, the examiner notes the reference recites "the invention includes soap and an indicator that provides an observable change after a period of time. It preferably contains at least one dye or pre-dye and a modifying agent that causes a change to occur. These components may be kept separate until washing is begun, or may be mixed in a manner such that the change does not occur until washing. Thus the components may be kept in a two part dispenser or may be kept together with one component inactive by some means, such as by microencapsulation, until sufficient physical stimulus results in their effective mixing." (col 3, lines 27-36). Therefore, it would be obvious that the microencapsulation feature can be used to separate the two components until the washing is started - thus a rupture would be expected to mix the elements. It is noted that there is no overly broad interpretation as it would be well within the purview of a skilled artisan to reasonably arrive at the interpretation that the microencapsulation feature can be used to separate the elements prior to mixing. Furthermore, it noted all disclosures "including unpreferred embodiments" be considered. In re Lamberti 192 USPQ 278,280 (CCPA 1976) citing In re Mills 176 USPQ 196 (CCPA 1972). Therefore, it would have been obvious to one of ordinary skill in the art to utilize microencapsulation feature since the MacDonald reference teaches one.

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d. Regarding the translation of the Rothan reference, it is noted that the reference was provided by applicants' in an IDS. The machine translation is provided with this communication. Regarding the properties of the cellulose element, the examiner notes that the court has held that that a material and its properties are inseparable. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). In the instant case, it would be expected that the cellulose element would behave in the same manner under the same condition. However, it is noted that the cellulose element is not a limitation in the instant claims. The water-soluble envelope is taught by the Rau reference.

e. Regarding applicants' argument that the liquid soap of the MacDonald and Rothan references infers an aqueous component, the examiner respectfully disagrees and notes that liquid refers to a state of matter (solid, liquid, gas) while (non)-aqueous refers to a chemical behavior thus a liquid soap does not necessarily indicates an aqueous component. As discussed above, the MacDonald reference lists various components none of which is water and both the MacDonald and Rothan references teach the step of using the liquid soap with water.

f. Regarding the argument of no reasonable expectation of success and dissimilar methods, the examiner respectfully disagrees and notes that the Rothan and Rau references teach certain concepts, and in combination with the primary reference, discloses the presently claimed invention. Specifically, the MacDonald reference teach applicants' washing hand methods with the feature of a microencapsulation and the Rothan reference is relied upon to teach a method of washing hands with a visual cue depending on an encapsulation feature and the Rau reference is relied upon to teach a water-soluble encapsulation in soap. Thus, it would be expected that the encapsulation taught by Rothan and Rau would not be detrimental as the separation feature of

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MacDonald. The examiner would like to clarify that the Rau reference is not relied upon to teach the gas feature but to teach the water soluble envelope.

g. Regarding the possible 1.131 declaration to show due diligence and reduction to practice, applicants are welcome to submit such declaration to substantiate the priority date. The declaration will be reviewed on the merits once submitted.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Ando et al. (JP01308499) teach a thermochromic dye in a soap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRI V. NGUYEN whose telephone number is (571)272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/T. V. N./

Examiner, Art Unit 1796

July 22, 2009

/Lorna M Douyon/

Primary Examiner, Art Unit 1796